

11774-PAJ

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RONALD SMITH.

Plaintiff,

-against-

LMS SHIPMANAGEMENT, INC.,
WATERMAN STEAMSHIP CORPORATION &
US BANK NATIONAL ASSOCIATION,

Defendants.

Case No. 08 CIV 6110
(Judge Castel)

ANSWER

Defendants, LMS SHIPMANAGEMENT, INC., and WATERMAN STEAMSHIP CORPORATION, by their attorneys, JUNG & MELE, LLP, answering the Complaint, respectfully allege as follows:

1. Defendants admit the allegations contained in paragraphs 2, 3, 11, 14 and 15 of the Complaint.
2. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1, 13 and 17 of the Complaint.
3. Defendants deny the allegations contained in paragraphs 4, 5, 6, 7, 8, 9, 10, 12, and 16 of the Complaint.

ANSWERING THE “FIRST CAUSE OF ACTION”

4. Defendants deny the allegations contained in paragraphs 18, 19, 20 and 21 of the Complaint.

ANSWERING THE “SECOND CAUSE OF ACTION”

5. Defendants repeat, re-allege and reiterate each and every admission and denial set forth in paragraphs 1 through 4 above of this Answer as if more fully set forth at length herein.

6. Defendants deny the allegations set forth in paragraph 23 of the Complaint.

AS AND FOR THE DEFENDANTS’ AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

7. Plaintiff’s alleged injuries, if any, are due to pre-existing conditions, accidents, events and/or his own misconduct.

SECOND AFFIRMATIVE DEFENSE

8. If Plaintiff received any injuries or suffered from any illnesses or disabilities, as alleged in the Complaint, said injuries, illnesses or disabilities were caused solely by the his own contributory negligence or comparative fault, and were not caused or contributed to in any manner by the alleged negligence or breach of warranty by Defendants.

THIRD AFFIRMATIVE DEFENSE

9. Plaintiff failed to take reasonable steps to mitigate his damages.

FOURTH AFFIRMATIVE DEFENSE

10. The Complaint fails to state a cause of action or fails to state a claim upon which relief may be granted.

WHEREFORE, Defendants respectfully demand that the Court enter judgment against Plaintiff dismissing the Complaint together with the costs and disbursements to

Defendants as against the Plaintiff, and that the Court grant such other, further and different relief as the justice of the cause may require.

Dated in the City, County and State of New York on August 5, 2008

Respectfully submitted,

JUNGE & MELE, LLP
Attorneys for Defendants
LMS SHIPMANAGEMENT, INC., and
WATERMAN STEAMSHIP CORPORATION

By: _____
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